



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 8, 1998

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR98-2129

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID#117730.

The Travis County District Attorney's Office (the "district attorney") received a request for "all information" relating to cause number 97-2870. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive. You have released some of the requested information.¹ However, you contend that the remaining requested information is excepted from public disclosure, and invoke sections 552.023, 552.101, 552.107, 552.108, 552.111, 552.115, and 552.130 of the Government Code. We have considered the arguments and exceptions you raise and reviewed the submitted information.

Initially, we address your claim that the requested information is excepted from disclosure under section 552.108, since you assert that section 552.108(a)(3) and 552.108(b)(3) except all of the submitted information from disclosure.² Section 552.108 of the Government Code, the "law enforcement" exception, provides:

¹As you have noted, documents filed with a court are public documents and must generally be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

²You have cited to *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), to support your section 552.108 claim. We note that the *Holmes* court construed the former section 552.108, which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, the former section 552.108 and the *Holmes* interpretation of the former section 552.108, are superseded by the amended section discussed *infra*.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You assert that because the requestor sought the district attorney's entire litigation file, the records are protected in their entirety under *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and that, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), "the decision as to what to include in [the file] necessarily reveals an attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You have submitted to this office documents which you indicate constitute a representative sample of the district attorney's entire litigation file, and assert that the information "reflects the attorney's thought processes and/or legal reasoning concerning the criminal prosecution . . . including the attorney's strategy decisions, issue formulation, notes and other writings evincing the attorney's mental processes, facts, legal theories, legal conclusions, and evidence that the D.A.'s Office considered important."

Upon review of the submitted information and based on the preceding analysis, we conclude that most of the information was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or represents the mental processes or legal reasoning of an attorney representing the state. Therefore, we agree that most of the submitted records are excepted under section 552.108(a)(3), and may be withheld.

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

We also note that some of the submitted information is subject to access provisions outside of the Open Records Act. See Open Records Decision No. 598 (1991) at 1 (Open Records Act exceptions are not applicable to medical records). You submitted to this office for review certain medical records of some of the victims. Access to the submitted medical records is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the

authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. These medical records are confidential, with access provided only as outlined under the MPA.³ Open Records Decision No. 598 (1991).

You also submitted to this office autopsy reports, including photographs. Section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that autopsy reports, including the full report and detailed findings of an autopsy, are public records. *See* Open Records Decision No. 529 (1989) at 4.⁴ These autopsy reports and the related photos must therefore be released.

As we resolve this matter under section 552.108, we need not address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision.⁵ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a horizontal line.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

³We note that you have indicated that the requestor "is the authorized representative of the family members of one of the victims of the defendant."

⁴You had asserted that the photographs are protected from disclosure in order to protect the common-law privacy of the individuals. We note that common-law privacy would be inapplicable in any event because an individual's privacy rights lapse upon the death of the individual. Open Records Decision No. 271 (1981).

⁵In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref.: ID# 117730

Enclosures: Submitted documents

cc: Mr. Timothy M.. Sulak
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(w/o enclosures)